

JOE E. SHELTON

IBLA 82-939

Decided June 2, 1983

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting acquired land oil and gas lease offers. NM-A 34531 (OK), et al.

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Consent of Agency -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Consent of Agency

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in an oil and gas lease offer be obtained prior to the issuance of a lease for such land. Absent such consent, the Department of the Interior is without authority to issue a lease.

APPEARANCES: Betty J. Wood, Esq., Bartlesville, Oklahoma, for appellant; Robert J. Uram, Esq., Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Joe E. Shelton has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated May 13, 1982, which rejected his acquired lands oil and gas lease offers NM-A 34531 (OK), NM-A 35432 (OK), NM-A 36017 (OK) to NM-A 36019 (OK). The offers were filed for lands in Rogers and Nowata Counties, Oklahoma, at the Oologah Lake Project under the jurisdiction of the Corps of Engineers, Department of the Army. The decision states:

The Corps of Engineers in Tulsa, Oklahoma, report that the mineral rights at Oologah Lake were obtained in order to halt oil production which was causing pollution to the lake. The Corps states that to allow leasing of these minerals would defeat the

purpose of the acquisition. When funding becomes available, research will be conducted to study the feasibility of production in the Oologah area. (43 CFR 3109.3-1).

Appellant states, on appeal, that there are other parcels in the same position in relationship to Oologah Lake as the applied for lands and there is production upon some of these contiguous parcels that is not causing pollution of the lake. He asserts that if allowed to lease, he would develop only at safe elevations that similarly would not pollute the lake.

The record shows that BLM sent inquiries, as to leasing in this area, to the Corps of Engineers on three separate occasions. The Corps first responded on February 13, 1981, that it was not in favor of oil and gas leasing stating: "Oologah Lake is an oil field with numerous unplugged or improperly plugged wells. As production is accomplished by water flooding, there is a serious pollution problem from oil being forced out of these wells." On June 22, 1981, when returning BLM's request for title opinions it stated:

The Government purchased minerals at Oologah to halt oil production which was causing pollution to the lake; therefore, these requests are being returned incompleated. To allow leasing of these minerals would defeat the purpose of the acquisitions.

When funding becomes available, research will be conducted to study the feasibility of production in the Oologah area, utilizing newer technology. Until further notice, no minerals will be leased at the Oologah Lake Project.

Finally on March 8, 1982, the Corps affirmed its earlier response stating: "As stated in our 22 June 1981 letter to your office, the Government purchased minerals at Oologah Lake to halt oil production which was causing pollution. Therefore, no minerals will be leased in this area until further notice."

Section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1976), states in pertinent part:

No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit * * * and subject to such conditions as that official may prescribe to insure adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered.

The same requirement of consent is set forth in the regulations at 43 CFR 3109.3-1.

[1] The effect of this statute is to preclude mineral leasing on acquired lands of the United States without the consent of the administrative

agency having jurisdiction over the acquired land Altex Oil Corp., 66 IBLA 307 (1982) Dennis Harris, 55 IBLA 280 (1981); Arthur E. Meinhart, 46 IBLA 27 (1980); Capitol Oil Corp., 33 IBLA 392 (1978). Thus, since the Department of the Army has withheld its consent, this Department cannot issue oil and gas leases for the land and the lease offers were properly rejected.

Appellant has also requested, in the alternative, that his offers be held in suspense until funding becomes available to conduct a study of the feasibility of production in this area. There is no indication by the managing agency that this might occur in the near future. In similar circumstances this Board has not approved such requests since they might well require BLM to carry such applications on the land records indefinitely. Sallie B. Sanford, 24 IBLA 31 (1976); J. G. Hatheway, 68 I.D. 48 (1961). No sound reason exists for altering the rule herein.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Gail M. Frazier
Administrative Judge

